

**ORDINANCE NO. 12-13**

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA DECLARING A BUILDING AND ZONING MORATORIUM FOR A PERIOD OF 180 DAYS FROM THE EFFECTIVE DATE OF THIS ORDINANCE ON THE ISSUANCE OF BUILDING PERMITS AND ON THE ACCEPTANCE AND APPROVAL OF BUSINESS TAX RECEIPT APPLICATIONS INCLUDING PROVIDING ZONING REVIEW AND APPROVAL OF APPLICATIONS FOR A BUSINESS TAX RECEIPT FOR THE ESTABLISHMENT OR OPERATION OF INTERNET SWEEPSTAKES CAFES OR ELECTRONIC GAME PROMOTIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, there has been a proliferation across the State of Florida, including the City of Hialeah, of businesses engaging in game promotions or sweepstakes utilizing simulated casino-style games to reveal prizes in connection with the sale of internet access purportedly compliant with Section 849.094, Florida Statutes;

**WHEREAS**, the legality of the operation of internet cafes is in question statewide given the lack of uniformity in interpretation, application, and enforcement of the law;

**WHEREAS**, the use of casino-style simulated games to reveal winning sweepstakes entries eligible for cash prizes is inherently deceptive causing participants to play as if they were engaging in gambling activities prohibited by Florida law or otherwise leading participants to believe they are engaging in lawfully permitted gaming activity in these back-door-casinos;

**WHEREAS**, the deleterious effects of gambling on a community are well known;

**WHEREAS**, there are two opposing competing bills in the regular session of the State's Congress considering whether to allow internet cafes under certain regulations or prohibit them entirely;

**WHEREAS**, local governments bear the burden of litigation as a result of efforts to enforce the State statute in its current form or as a result of local measures adopted to prohibit or regulate internet cafes;

**WHEREAS**, due to the inherently deceptive nature of the operation of electronic game promotions or sweepstakes by internet cafes, the vagueness and uneven interpretation, application, and enforcement of the law governing game promotions and other statutory exemptions from the general prohibition against gambling, and the competing bills before the Florida Legislature, it is in the best interest of the public health, safety, and welfare of the community and residents of the City of Hialeah to adopt a moratorium on the acceptance of applications for and the issuance of any development permits, including building or zoning review, and for the issuance of business tax receipts or any other approval for the establishment and/or operation of internet sweepstakes cafes or electronic game promotions;

**WHEREAS**, adoption of the moratorium will provide the City of Hialeah an opportunity to develop regulations that address the secondary effects of internet sweepstakes cafes or electronic game promotions and their impacts on the community or alternatively, to prohibit additional internet cafes or the operation of electronic game promotions in the City of Hialeah; and

**WHEREAS**, the Planning and Zoning Board at its meeting of February 22, 2012 recommended approval of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated herein by reference as if fully set forth herein.

**Section 2: Internet Sweepstakes Café or Electronic Game Promotion**

For purposes of this moratorium, “internet sweepstakes café” shall mean any person, firm, non-profit or for-profit corporation, enterprise, organization, or association who provides internet access to the public and in connection with the promotion, sale, or provision of the service runs an electronic game promotion utilizing any electronic or mechanical device, machine, network, or system to reveal the results of the game through simulations of games ordinarily played on a slot machine or in a casino or otherwise in connection with gambling referred to as casino-style simulated games.

For purposes of this moratorium, “electronic game promotion” shall mean, but is not limited to, a contest, game of chance, sweepstakes, or gift enterprise conducted in

connection with the promotion or sale of consumer goods, products or services through the use of any mechanically or electronically operated machine, network, system, or device that is operated, played, or otherwise interacted with by the participant in the game promotion in such a way as to display, disclose or reveal through casino-style simulated games whether the participant is to receive or become entitled to receive a payout, jackpot, or prize.

**Section 3:** The City of Hialeah, Florida hereby declares a moratorium on the acceptance of building applications and issuance of building permits and zoning review or approval of building permits applications and the acceptance and approval of applications for business tax receipts, including zoning review and approval of business tax receipt applications, for the establishment or operation of new internet sweepstakes cafes or electronic game promotions, for a period of 180 days from the effective date of this ordinance.

**Section 4: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 5: Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

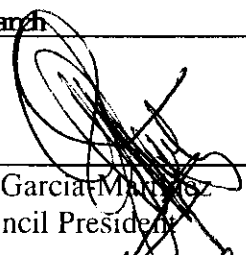
**Section 6: Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 7:     Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.


PASSED AND ADOPTED this 13th day of March, 2012.

  
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Isis Garcia-Mendoza  
Council President

Attest:

Approved on this 13 day of March, 2012.

  
\_\_\_\_\_  
David Concepcion, City Clerk

  
\_\_\_\_\_  
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
William M. Grodnick, City Attorney

~~Strikethrough~~ indicates deletion. Underline indicates addition.